

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 v.) 6:10-cr-60066-HO-1-2

6 STEVEN DWIGHT HAMMOND,)

7 DWIGHT LINCOLN HAMMOND, JR.,)

8 Defendants.)

9 TRANSCRIPT OF TRIAL PROCEEDINGS

10 BEFORE THE HONORABLE MICHAEL R. HOGAN

11 UNITED STATES DISTRICT COURT JUDGE, AND A JURY

12 TUESDAY, JUNE 12, 2012

13 PENDLETON, OREGON

14 DAY 1, PLAINTIFF OPENING STATEMENT - PAGES 1 - 51

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1 (Tuesday, June 12, 2012)

2 (Proceedings were had which were not
3 transcribed or are bound under separate cover.)

4 (Lunch recess: 11:47 until 12:45 p.m.)

5 P R O C E E D I N G S

6 THE CLERK: Come to order. This court is again
7 in session.

8 THE COURT: Mr. Papagni.

9 MR. PAPAGNI: Please the court, opposing
10 counsel, colleagues, members of the jury, Judge Hogan
11 told you before we broke for lunch, attorneys' comments
12 is not evidence, and that's true. We don't give the law
13 either. The law comes from the court. But you folks
14 are going to be shown some things here in a second which
15 are the charges that these two men face that the United
16 States has alleged they have done.

17 The accusation is meaningless. The grand jury
18 just indicted them. That's not evidence either. All
19 the evidence will come from the witness stand. And as
20 I'll be talking about for quite a while this afternoon,
21 you'll get a little outline of the case, and that's all
22 an opening statement is.

23 My job for about the next hour is to tell you
24 why we think our evidence will prove to you beyond a
25 reasonable doubt that they did what they are accused of.

1 And the defense lawyers are going to stand up and tell
2 you why we won't be able to do that. Pretty simple
3 process.

4 And then we'll get to the witnesses. So you
5 are going to be sitting here for a week or two,
6 hopefully not longer. And at the end of that you're
7 going to be asked some questions. And I'll -- the way
8 you answer your questions is you got to know what the
9 charges are. So I'm going to ask Ms. Root to go ahead
10 and put them up. Start with Number 1. There we go.

11 The first one is a conspiracy charge. The
12 judge read to you the indictment. And I'm just going to
13 go through these real quickly, it just helps my argument
14 or my statement better for you.

15 A conspiracy is nothing more than an agreement,
16 an agreement between two people to break the law. In
17 this case, we have alleged that they've -- these two
18 men, father and son, they've agreed to go ahead and
19 intentionally and maliciously damage real or personal
20 property owned by the United States. And the United
21 States owns a lot of property. Some of Forest Service,
22 some BLM, some Malheur Wildlife Refuge, U.S. Fish and
23 Wildlife Service.

24 In this case, we're primarily concerned about
25 the U.S. Fish and Wildlife Service as well as BLM, but

1 it doesn't much matter. The accusation, and that's all
2 it is, is that they made an agreement to intentionally
3 and maliciously damage it. That could be fences, that
4 could be real property, it could be bitter brush that
5 mule deer feed on. It could be all sorts of things.

6 We have Ms. Sgarlata here. And when it's her
7 turn to go ahead and examine some witnesses, she's going
8 to put some folks on the stand, they're going to talk
9 about the damage aspect of the case. That probably
10 won't be until next week. But that's going to be her
11 job. And we have a few folks to talk to you about that.

12 So the conspiracy doesn't have to be just one
13 crime. It can be separate. You got to decide them
14 separately. But it has to be unanimous on each of them.
15 But it can also be by means of fire that they willfully
16 damaged or attempt to damage in excess of \$1,000. So
17 it's a little bit of difference between the top one and
18 the second one. Second one is we have to show you it's
19 more than \$1,000 worth of damage to the government's
20 property, United States' property.

21 Third one is little different, too. And you'll
22 figure that out as we get into the case. Again, they
23 intentionally, maliciously, but they damaged some
24 property by means of fire. This is all about fire in
25 this case. That they intentionally and maliciously

1 damaged or attempted to damage property that's used in
2 interstate commerce or affecting interstate commerce.

3 Jump ahead a little bit. We're contending that
4 when they lit some fire on U.S. property, burned over
5 onto private property, the neighbor's property,
6 Mr. Otley's property, and it burned up a big section of
7 his property, and he'll come in here and he'll testify
8 to you that he raises cattle, which is not pretty much
9 unheard of, but he sells it in Nevada. And they do it
10 over the video sometime. But that cattle goes across
11 what? State lines. That's why we're saying that when
12 he damaged Mr. Otley's property and Mr. Otley was
13 selling his property over state lines that interstate
14 commerce is involved.

15 Go to the next count. Thank you. Now, this
16 count is -- gives you a date. And it kind of will help
17 you get through this thing if you keep your dates in
18 line. This goes back a long time. It goes back to
19 September 30th of 2001. And these fires are given
20 names, sometimes multiple names. It gets a little
21 confusing. We anticipate you should listen carefully to
22 that, because we're going to try to break it down by
23 dates and locations, but it's alleged that there is a
24 Hardie-Hammond arson. And this was a grazing allotment
25 section. Talk about that in a moment. And Mr. Steven

1 Hammond, his father Dwight Hammond, and other persons
2 directed by them, and that will become clear to you as I
3 get into that particular fire, we'll talk about the
4 witnesses we anticipate what the testimony is going to
5 be, that more than just two of them here intentionally
6 and maliciously damaged, destroyed, or attempted to
7 damage or destroy by means of fire real and personal
8 property owned by the United States. One count.

9 Go on to the next one, please, Ms. Root. Then
10 we kind of jump ahead about five years to August 22nd of
11 2006. And now it's the same thing. It's the same type
12 of charge except it's a different location. It's also
13 one of their grazing allotment areas. It's the Lower
14 Bridge Creek area.

15 Go on to the next one, please. Next, same --
16 different count, but now we say it's more than \$1,000.
17 You can kind of see here in a second how it works
18 together.

19 Lower Bridge Creek, this time we're saying the
20 same amount of money, more than \$1,000.

21 Going on to the next one. Now we got another
22 area, same date, although you are going to find out as
23 we go through it in a second, that it's later at night.
24 This one is called the Krumbo Butte arson. Make the
25 same accusation against these people. The same

1 accusation is that they did it intentionally and
2 maliciously.

3 Now, the defense attorneys are going to stand
4 up and we anticipate that they're going to say, well, we
5 had a right to do it or it was an accident or we may
6 have been reckless or negligent, and they may offer
7 evidence in that regard, and that's fine. And if you so
8 find, then they're not guilty. You have to find them
9 not guilty. But we're contending otherwise. So that's
10 that count.

11 Let's go on to the next one. \$1,000 again.
12 Same thing. So you can see very quickly that these
13 fires, there's four of them to be concerned about, only
14 the first one has one count, the other have two.

15 Go on to the next one, please. This one is
16 different. This one is different. This one has a
17 kicker, if you want to call it that. In this one we
18 allege on August 23rd, the next day, it's referred to as
19 the Granddad arson, that's going to be kind of
20 confusing, but we're going to clear that up for you,
21 along Bridge Creek Road that these two men intentionally
22 and maliciously damaged and destroy, or attempted to
23 damage or destroy by means of fire, real and personal
24 property of the United States. This is the hook. This
25 is the concern. This is going to be interesting to you.

1 As a result of what they were doing, they
2 directly and proximately created a substantial risk of
3 injury to one or more persons, including, but not
4 limited to, BLM employees and firefighters Chad Rott,
5 Lisa Megargee, Lance Okeson and Joe Glascock. We'll
6 talk about that probably a lot more.

7 Next one, please. There is \$1,000 again.

8 Next one. This tampering with witness charge,
9 Number 9, that's a day after, that's August 24th. Some
10 of you may know the Frenchglen Hotel. I think Judge
11 asked you earlier today. And the accusation is that
12 this BLM employee whose name I just read to you a moment
13 ago, that he met up with Steve Hammond at the Frenchglen
14 Hotel. And the accusation is Mr. Hammond when he met
15 with Mr. Glascock he tried to intimidate him and
16 threaten him and attempt to corrupt him, persuade
17 Mr. Glascock not to report any lawful violations of the
18 law, in other words not to tell law enforcement what
19 Steven Hammond and his father had done the previous day.
20 That's the accusation. Nothing more. Nothing more.
21 Mr. Glascock will be taking the stand.

22 So those are just the charges. So let's break
23 down the fires. Now, in a second here what's going to
24 pop up, I hope, is going to be a map, a big overall map,
25 please, and it's going to be a separation of four fires.

1 Now this covers the period -- and you'll have it on your
2 monitors -- but it should be blurry enough that you
3 can't read all what I call bubbles, like cartoons, when
4 you read cartoons it has the bubbles, you're not
5 supposed to be able to read those yet, but what you're
6 going to see is just an overall map of the vicinity that
7 we're concerned about, which covers thousands of acres.

8 Okay. So this little burned area here, it's
9 called the Hardie-Hammond fire in 2001. It's in black.
10 We jump five years ahead and we have the Lower Bridge
11 Creek Fire. And we'll talk about that because part of
12 that fire was caused by lightning. There is no
13 contention to the contrary.

14 The third fire is up to the north. That's
15 Krumbo Butte Fire. We'll talk about that. That's fire
16 number three.

17 And then there is a fourth fire, which is along
18 Bridge Creek Road. You see a lot of little red marks
19 there. And that's the one that we -- there's a
20 contention that there were folks along that road and
21 that Mr. Dwight Hammond and Steven Hammond here when
22 they were lighting fires, put those people in harms'
23 way. The law is more specific and we'll talk about
24 that.

25 This is a general map. So let's talk about the

1 specific fires. Got to break them down for you. Before
2 we go to the first fire, it's important that you know
3 that in 1999, we're going to have Mr. Dyer testify. And
4 we anticipate his testimony is going to be is he was the
5 BLM district manager or ranger, he was the kind of top
6 dog in the area. And he will testify that in September
7 of 1999, one of the permittees, Mr. Steven Hammond, went
8 ahead and he called up and wanted to burn on his
9 property, which was fine, burn some sagebrush. And that
10 was good. But he was told be careful. Don't burn on
11 the public land. Well, it did.

12 Okay. It burned on the public land. Now,
13 maybe 90 acres, it wasn't much, okay. And Mr. Dyer will
14 testify that he asked Steven Hammond and Dwight Hammond,
15 who's sitting next to him, and the mother who had owned
16 the Hammond ranches, now Hammond ranch is a pretty good
17 sized spread. Not supposed to ask a person how big
18 their spread is but we'll anticipate that you'll find it
19 was over 10,000 acres. And they have a lot of these
20 grazing allotments, which are a lot more bigger and a
21 lot more valuable.

22 Well, 1999, this little fire kind of spread
23 over on to public land and Mr. Dyer asked them to come
24 on in, and they did. Mr. Dyer asked Steve Hammond if,
25 you know, he did this, if he burned it, and he said,

1 yeah, I did. And he was asked -- there was another BLM
2 employee there, we anticipate the testimony will be --
3 he was asked, well, did you try to stop it? No. Could
4 you control it? Well, it wasn't controllable. Did you
5 do anything to prevent it? No. So Mr. Dyer gave him a
6 tongue lashing. He said, don't be doing that in the
7 future, we'll anticipate the testimony will be. And he
8 said, you can't do that. And if you want to burn your
9 grazing allotments, we have a program you have to go
10 through. You have to agree with us. It's called a
11 prescribed burn agreement. And you have a range con
12 that you can work through.

13 Now, for those of you who don't know, we
14 anticipate the testimony will be that at the time the
15 range con or the rangeland specialist, they got these
16 nice names, whose specialization is to work with a
17 permittee to help them get their grazing for their cows,
18 the AUM's. I don't pretend to tell you what that means,
19 but we're going to have someone here that will. And you
20 work together. You know, and you want your AUM's to go
21 ahead and move your cows so they get fed good and more
22 pounds means more money. And so Mr. Ward was their
23 range con.

24 So Mr. Dyer said to the Hammond family who were
25 all sitting there, look, if you want to burn it, let's

1 do a prescribed burn agreement. Now, you can do what
2 you want on your property because that's private
3 property, but public property, we got all this red tape
4 and regulations you get to go through. Okay. But we
5 got to go through it because it's public property. You
6 don't own it. You have a grazing lease on it. So
7 Mr. Dyer tells him that, and his dad, and his mom.

8 And after they are through saying that,
9 Mr. Dyer, we anticipate will testify, and he'll testify
10 this afternoon, that after he said we can do this
11 agreement, if you want to do it, do it with Dave Ward.
12 But then comes the warning. Then comes the warning.
13 Don't do it again. If you do, there'll be legal
14 consequences. It could be nothing but a fire trespass,
15 a little fine. It might be a prosecution for
16 suppression activities. It wasn't much discussion. But
17 if you intentionally set fires, that could be more.

18 And then Mr. Dyer does what? Well, this is
19 BLM. He does nothing. There's no fine. There is
20 nothing. The case is closed. That's 1999.

21 That sets the stage for why you folks are here,
22 because now we jump ahead two years. Two years later,
23 it's public land, we have people that like to hunt. And
24 we anticipate the testimony from Gordon Choate, maybe
25 this afternoon, is that Mr. Choate grew up in Burns. He

1 was a hunter. He loves to hunt. He knows all about
2 hunting. And he was retained by a guide service to
3 guide a couple -- a father and son, and they'll testify,
4 too, Dennis and Dustin Nelson. Dustin had just gotten
5 off his Mormon mission. His dad lives in Utah. Dad is
6 a construction guy. Let's bring my son out here. We'll
7 go hunting and get a good mule deer, you know, get a
8 good buck.

9 So Gordon Choate goes ahead. And he goes out
10 in the public land here. Now, we've got these maps.
11 You're going to be seeing a lot of maps, folks. We got
12 these maps. This is Number 2. Defense counsel, if you
13 can't see it there, it's Number 2. Number 2, the
14 Hardie-Hammond fire. Remember we talked about it. We
15 have -- we'll show you a lot of photographs. Just as a
16 footnote, we anticipate the testimony will be when you
17 see the numbers Exhibit 10 and these little white
18 things, or you'll see exhibits underneath them, the
19 reason why we do that is if these photos come into
20 evidence, which we think they will through the
21 witnesses, and maybe a week from now you forgot where
22 Exhibit Number 126 the photograph was taken, just look
23 at the map, and this one says Exhibit Number 7, you look
24 at Exhibit Number 7, and you'll know exactly where it
25 was taken and when.

1 So Mr. Choate sets up a camp. He's getting
2 paid \$1,000 for this trip. Dusty and Dustin Nelson,
3 they come out, father-and-son trip, it's going to be a
4 great time. And so we'll get Mr. Choate up here. They
5 come out, he sets up his camp, and it's near Hammond
6 ranch property. You'll see it here. Hammond ranch
7 property here, Hammond ranch property here. And they
8 come out. And the first day of hunting season, they go
9 out and they see some bucks, but they're not really, you
10 know, we can do better, so they wait until
11 September 30th, the morning of September 30th. They get
12 up about -- before -- it's still dark out. And he parks
13 his truck -- Mr. Choate parks his truck along the road
14 here. And they walk out into the public section,
15 section 15, and they go ahead and they wait, and the
16 young man makes a single shot and gets himself a real
17 nice buck.

18 The man on the right is Gordon Choate. He's
19 going to be your witness. Dustin is the young man on
20 the -- to be to your left. And there is the buck. His
21 dad, too, was there. He'll testify this afternoon.

22 So if you look at the sky, it's just a gorgeous
23 sky. There ain't any clouds or lightning anywhere. And
24 that will come up later.

25 So they get their buck. And it's a happy day.

1 Mr. Choate moves his pickup down the road so it'd be
2 closer to drag the buck to. And while he's parked
3 there, he sees coming down the road from the east, we
4 anticipate the testimony will be, is a pickup. And in
5 that pickup is Dwight Hammond. And Dwight Hammond talks
6 to Mr. Choate. And we anticipate the testimony will be
7 that Mr. Dwight Hammond asks, well, how's your hunting
8 going? or something to that effect. And one of his
9 passengers makes a smart-aleck comment. They got a good
10 one, but uses a little different language.

11 And Mr. Dwight Hammond asks these guys where
12 they're camped. And Mr. Choate knows Mr. Dwight
13 Hammond. Had met him once before. And Mr. Choate, we
14 anticipate, will testify that he was pretty cautious
15 when he said where they were camped. He just kind of
16 waved out over here, waved his arm up Bridge Creek Road.
17 Didn't say much more.

18 Next thing Mr. Dwight Hammond says, well, we
19 have a couple of guys, meaning hunters, coming over the
20 hill. Okay. Fine. So Mr. Choate starts to get his
21 deer going down the road. Mr. Dwight Hammond heads off
22 toward the west. And that's pretty much it.

23 And as they're going down the road with their
24 buck, young man, his dad, Mr. Choate see a group of
25 deer, nice deer, coming across the ridge and go down

1 under the road and come back up on the other side. They
2 get out their binocs and they stop and it's really a
3 pretty site.

4 Well, it was, and all of sudden the shots rang
5 out, about 10, 12 shots. And all of a sudden, these
6 deer -- they see some pelt flashing, one leg flopping.
7 And they look over to the right. And Mr. Dusty Hammond
8 (sic) sees one man kind of shooting wearing a white
9 cowboy hat, white cowboy hat. And so they see that, and
10 the anticipated testimony will be, that Mr. Choate
11 decides it's kind of time to leave, and so they turn
12 around, and as they're heading back, they look back and
13 they see there's four people up there. That will become
14 important to you folks later, four folks.

15 And they drive back to their camp. Now, when
16 they're driving back to their camp, keep in mind that
17 Dwight Hammond, his property is nearby, when he's
18 talking with Mr. Choate, we anticipate his testimony
19 will be that Mr. Dwight Hammond did not tell Mr. Choate
20 these two people, by the way, we're going to do a
21 controlled burn today. We're going to start some fire
22 on our property this Sunday, you know. Even though my
23 group of folks here are hunting, we're going to do a
24 controlled burn because we got this sagebrush and
25 unwanted vegetation, so we're going to light up our

1 property. We might want to tell you that. Well, he
2 didn't. Mr. Choate will say he was never told that.

3 But they get back to their camp, and we
4 anticipate the testimony will be that around 10 o'clock,
5 when Mr. Choate is dressing down the buck, smoke comes
6 into the camp. 10 o'clock. Plus or minus 15,
7 20 minutes, not too long after the deer were shot.
8 Mr. Choate has a reason to be upset. He has a first
9 obligation to get these father and son out of there. So
10 he packs up the deer. And they travel up this road,
11 which is called Bridge Creek, they go clear around to
12 Moon Hill, also called McCoy Ridge, they go by different
13 names. And they take them clear down to base camp where
14 the Nelsons are at.

15 Dennis Nelson will testify that they were
16 heading back to Utah. And the buck was loaded up. And
17 he thought it was right around noontime that they were
18 already back at their truck there. Okay? That becomes
19 important.

20 I have this blocked out here. That's where he
21 observed the deer when he was hunting. It becomes
22 important because what happens next is Mr. Choate goes
23 back to his camp. He's got \$1,000 in camping gear. And
24 as he's going back, he stops along the roadway, and he
25 takes photographs right around noontime, a little bit

1 after noon. And you're going to see those photos of the
2 fire. And you can tell -- section is what? About a
3 mile? So it's about three miles away. Choate takes the
4 photos. The only photographs you're going to see. Not
5 from any law enforcement people, just this hunting
6 guide.

7 He gets back to his camp, takes him a long time
8 because he's concerned about where the -- that fire's
9 going to come through his camp. Smoke's blowing right
10 through it. It's black. He gets back about 5 o'clock,
11 6 o'clock, and he calls for a game cop. Because after
12 he saw the guy in the white hat shoot his deer, the guy
13 in the white hat comes down the ridge and hides behind
14 some sagebrush.

15 Mr. Choate will testify that when Dustin Nelson
16 got his buck, they tagged the buck. You need a license.
17 This is public land, not landlord land, where the deer
18 were at. So Mr. Choate stays in his camp, calls for a
19 game cop. Next day, a game cop comes out about 9
20 o'clock. Two of them, one with U.S. Fish and Wildlife
21 Service and one with the Oregon State Police. They come
22 out. Mr. Choate feeds them breakfast. It's 9 o'clock.
23 Takes them to the location where the deer was shot.
24 There is no blood trail, nothing there. Of course,
25 Gordon will tell you that as an experienced hunter, he

1 knew that the blood after a while with smoke and time,
2 turns kind of black or dirty looking, but he'll tell you
3 about that. They couldn't find any evidence of the deer
4 being hit. No dead deer.

5 They kind of walked around but they couldn't
6 see much because it was -- smoke was burning through the
7 area. And we anticipate what will be said is that while
8 he was standing there up on the hill where the deer was
9 shot, he sees the same pickup that he saw Mr. Dwight
10 Hammond in, and he sees someone wearing a white cowboy
11 hat go down in front of him. And he's just standing
12 there. So he's made his complaint. And he's talked
13 about what will happen. And so there is an
14 investigation.

15 The investigation, they finally get a BLM
16 officer into the case about a month later. And they
17 investigate it. And Dave Ward, the game range con, he
18 had no notice that they were going to do this burn, he
19 gets up there and he notices right along the fence line,
20 138, 139 acres burned. Not a whole lot, but it has to
21 fence off this little section for a couple of growing
22 seasons. So it's only about 400 bucks, plus whatever it
23 costs to suppress it, whatever it was -- there were no
24 suppression costs. It wasn't a very expensive fire.

25 But it meant a lot to Mr. Choate and father and

1 son. So the government gets involved in this. And we
2 go ask Mr. Steve Hammond, Dave Ward takes him out near
3 Blitzen Road Creek a few weeks later. And he asks
4 Mr. Hammond about the fire. Mr. Hammond says he didn't
5 know anything about it. He didn't light the match.
6 Okay. Well, this LEO wants to talk to you. Well, I'm
7 not going to just get a ticket. He'll have to come and
8 see me somehow. I'm not going into Burns just to get a
9 ticket. Okay. That's fair.

10 So what happens is that Mr. Ward arranges for
11 this law enforcement officer, Agent Shrader, to talk to
12 Mr. Hammond. And there is a phone conversation before
13 that. Mr. Hammond says, ask me specific questions.
14 Mr. Shrader does. And the answers are: No, I didn't do
15 it. No Hammond ranch was involved. No.

16 And then as the questions are being asked of
17 him, he said, well, I did start a fire October 1st in
18 section 25, which is along his property. But that's not
19 where the fire was. That didn't make much sense.

20 Then Dave Ward mentions that there was a deer
21 slaughter, some deer were shot. Mr. Steven Hammond gets
22 very agitated at Dave Ward, his range con. Dave, why
23 didn't you tell me, he says. Well, Dave didn't know
24 they were going to be out there lighting the fire. He
25 didn't think of it. But when that happened, something

1 else occurs.

2 At this point, the government, everybody says
3 case over, we can't prove it, end of case, no charge.
4 Just Gordon Choate's word. So the years pass.

5 2001 goes into 2002. In 2002, in June, Mr.
6 Steve Hammond writes a letter to Mr. Dyer. It's a long
7 letter. It's six pages, single spaced. He says, Dave
8 Ward isn't communicating well. Dave Ward doesn't do
9 this. Dave Ward doesn't do that. And at the end of the
10 letter, he says I don't want Dave Ward as my range con
11 unless you have another employee.

12 He also says in the letter, about midway
13 through it when it's talking about the slaughtering
14 incident, Dave Ward didn't tell me about that and I was
15 not there. That's what he wrote in the letter he
16 signed. I was not there. Okay. That's 2002.

17 2003, we get a new person in BLM, management
18 cycles through. What happens is a gal comes in, little
19 gal, and she's a by-the-book type person. Her name is
20 Karla Bird. We anticipate her testimony will be that
21 she wanted to meet the Hammonds. She goes out to the
22 Hammond ranch with the new range con, Cam Swisher. And
23 they go out and they meet the mother, who's co-owner of
24 the ranch, Susie Hammond. Good note taker by all
25 accounts. And we anticipate what will happen is that

1 while they're looking at their grazing allotment map,
2 according to Karla Bird's sworn testimony, we
3 anticipate, is that Steve Hammond starts waving at the
4 map and says, I set this fire. I set this fire. I set
5 this fire. I set this fire. And you guys didn't catch
6 me.

7 She wrote that down. That was her first
8 meeting with the guy. But nothing happens. You can say
9 whatever you want in this country, you gotta prove it.

10 So 2003 passes and now we go to 2005. Now,
11 there's some fires up there in 2005. And there is no
12 claim from the government's side of the table that the
13 Hammonds were responsible for that. Could have been
14 lightning. But whatever the cause of it, there was
15 fires, and those fires become important because they're
16 the anchor points from the 2006 fire. And you'll learn
17 what anchor points are from Lance Okeson.

18 Nothing on 2004. So in 2005, we have Ms. Bird,
19 she gets a call from Steve Hammond who says I don't want
20 a firefighter's footprint on our property.

21 MR. BLACKMAN: Objection.

22 MR. MATASAR: Objection, Your Honor. I believe
23 there was a pretrial ruling on this matter.

24 THE COURT: Sustained.

25 MR. PAPAGNI: What I'm referring to is he calls

1 her and says I don't want any firefighters put on the
2 property.

3 THE COURT: Go on to the next matter, please.

4 MR. PAPAGNI: So what happens is she takes that
5 and she works out a plan trying to say that we won't do
6 that. Okay. And that becomes important because as
7 you'll find out, we have a young man named Chad Rott who
8 becomes a BLM firefighter. In 2005 he's making a run
9 trying to get out to the public land to put out the fire
10 and he makes a wrong turn. And that goes on to Hammond
11 property. Now, he's got his little crew with him. Chad
12 is a young man. And when he does that, this pickup
13 follows him and pulls him over. And the person in the
14 pickup is Steve Hammond.

15 And he remembers that because he got -- well,
16 he'll tell you how he got chewed out in front of his
17 crew, but he never forgot it. So because he went onto
18 that property like that, Karla Bird gets this phone
19 call, we don't want the firefighters on the property.

20 MR. BLACKMAN: Objection.

21 MR. MATASAR: Same objection, Your Honor.

22 THE COURT: Sustained.

23 MR. PAPAGNI: So Chad Rott at that point, he
24 goes ahead and he fights this fire. The fire is fought.
25 After the fire is out, a couple days later, Steve

1 Hammond goes up and he tells his neighbor, Bill Otley,
2 you know, I was starting some fire up there. Bill, I
3 can't remember the location. It just happened to get
4 through the fence line and burned about 20 acres.

5 And Bill Otley says that's okay. It's nothing
6 big. Thank you for telling me.

7 That's pretty much the end of the 2005 fire.
8 But then comes 2006. And in 2006, Steve Hammond goes
9 and tells the sheriff of Harney County, he wants to know
10 if he can prosecute BLM firefighters if they trespass --

11 MR. BLACKMAN: Objection.

12 MR. PAPAGNI: He wants to know if he can
13 prosecute them, and --

14 THE COURT: Overruled.

15 MR. PAPAGNI: -- the sheriff goes ahead and has
16 a conversation about that.

17 Now, the sheriff of Harney County has known
18 Mr. Dwight Hammond since 1967. The sheriff Dave Glerup.
19 So after Steve Hammond talks to them, he then calls up
20 Karla Bird. And he wants to know how soon the allotment
21 will be burned in the area. And she says, well, you
22 know, I don't know. And he says, well, that's not soon
23 enough.

24 And then we anticipate the testimony will be is
25 that after that on August 17th, Steve Hammond is doing a

1 fencing project with his new ranch con, this one's name
2 is Joe Glascock. It's August 17th. And while they're
3 doing the fencing, Mr. Glascock hears Mr. Hammond say,
4 well, you know -- Mr. Glascock by the way was commenting
5 on how good the land looks because it was burned --
6 says, you know, my dad and I been setting fires for
7 years. You know, and we just kind of drop matches in a
8 straight line here. And don't be surprised at the next
9 lightning storm if there's fire here at Bridge Creek.

10 Mr. Glascock hears that on the 17th of August.
11 On the 21st of August, he reports it to the law
12 enforcement officer, George Orr, says this is what I was
13 told.

14 On the 21st of August, there is a lightning
15 storm. And it's a doozy. There's lightning all over
16 the place. You'll see a map with an expert named Holle
17 who's going to testify how we have sensors that can tell
18 you pretty close to where these lightning bolts hit and
19 the damage they did. And he's going to talk about how
20 that lightning was from about 3 o'clock, 3:20 on the
21 21st all the way until about, oh, 6:20, 6:30 on the
22 21st. Okay. And there is a fire in the Lower Bridge
23 Creek area.

24 Joe Glascock is sent out there from Burns. He
25 comes out there, he sees the Hammond pickup and horse

1 trailer. He gets out to the side. And he gets in his
2 four-wheeler, and he goes around the entire burn site.
3 You can see -- this is Exhibit 32, gentlemen. Goes
4 around the entire burn site. And by 10:30, he sees that
5 the entire fire was caused -- see the lightning strikes
6 here, 8/21 at 6:10:41 p.m., peak, a negative 16.9.

7 So he goes around here, sees a little burning
8 on the inside, but the perimeter is completely out. And
9 he bumps into Dwight Hammond about 10:30. And tells
10 him, you know, that's how many acres, I don't know, 20
11 whatever thousand, whatever acres, and Dwight Hammond's
12 comment to Joe Glascock at that moment is, well, too bad
13 it wasn't bigger.

14 Joe Glascock then leaves the area because there
15 is another fire burning, another lightning on Mormon
16 Place, I think the testimony will be, I anticipate. But
17 as he leaves, then he hears something. Couple of things
18 happen.

19 First, an air attack guy who is overhead, his
20 name is Lambert, and we anticipate that Lambert is going
21 to testify that he was noticing there was something
22 going on that was suspicious to him.

23 Now, an air attack pilot is the guy that's up
24 in the airplane. And they're looking at the fire from
25 the sky. And they are trying to do suppression

1 techniques. And he notices about this location -- now,
2 keep in mind that they are flying, longitude and
3 latitude are -- there's going to be some room for error.
4 But at 12:15 he notices in that location a fire, which
5 is outside the perimeter Joe Glascock said it was at.

6 And about the same time, we have a gal who was
7 working up on the wildlife refuge, her and her husband,
8 they are volunteers, and they're at the gauging station,
9 and they see a tall man come out of the smoke. He looks
10 pretty exhausted. He's walking toward the direction of
11 the Hammond pickup and horse trailer. And they're
12 there. And she hollers out to him, you okay? Do you
13 need a ride? The man turns around and walks back into
14 the smoke.

15 Joe Glascock comes back -- he's sent back here,
16 he comes back here, and he goes down the road, and he
17 talks to Steven Hammond's kids for a second, and then he
18 gets to Steven Hammond. Steven Hammond he meets at
19 about 1 o'clock. And as he's coming over the -- coming
20 toward the area, he's seeing these fire columns outside
21 his perimeter that he thought was out on the other side
22 of Bridge Creek. Little gully. Outside of that. He
23 also sees it to the west.

24 And as he sees Steve Hammond, Steve Hammond's
25 walking along or driving or on horseback, excuse me,

1 he's taking Dwight's horse and Dwight is afoot. And at
2 that point, Joe starts talking to Steve. And Steve
3 says, wow, that fire really took off. And as he says
4 that, Mr. Glascock's looking over Steve's shoulder, and
5 sees these columns of smoke and fire start to take off.

6 So Mr. Glascock then goes ahead and he's now
7 moving around trying to get ahead of the fire so he can
8 report where it's at. And we anticipate he'll testify
9 to you all about it. That's Mr. Glascock up on the
10 screen. I think he has a beard now.

11 The next thing that occurs is after that fire
12 is going, that fire takes off. And you can see from the
13 map, the big map, which he got here was an entire area,
14 this is a satellite imagery area. Now, keep in mind
15 this will be -- kind of broke it down into colors for
16 you, separate the maps -- the fires, excuse me. And
17 what you got in this area here, you can see the little
18 outline Mr. Glascock drove before the fires took off,
19 Mr. Steve Hammond said, we anticipate the testimony will
20 be, the fire starts going.

21 Resources are allocated down there. It's a bad
22 fire season. Resources are allocated there. And
23 Mr. Glascock was sent to Antelope Creek. Now, he does
24 some communication with firefighters, bringing people
25 in. Also got Lance Okeson who comes into it. At any

1 rate, they end up going up through what's called
2 Antelope Reservoir about 7 o'clock that night.

3 And they start doing what's called black line
4 along Bridge Creek. And they do that because -- this
5 dark area that you can see on your monitors, that's the
6 2005 fire that burned away the fuel. And by burning
7 away that fuel, that's a safe zone because a forest fire
8 has to have heat, air, and fuel. So Mr. Okeson, who's
9 calling the shots, he's the line safety officer, he's
10 putting this black line, in other words, he's going to
11 burn the fuel up in front of this if he can so that if
12 the fire gets as far to the juniper belt, it'll stop the
13 fire. That's the tactic. Mr. Lance Okeson will talk a
14 lot about that.

15 So Joe Glascock and Lance Okeson are up at
16 Antelope Reservoir. It's about 7 o'clock at night. And
17 they see a Super Cup go overhead. And they look up and
18 they see Mr. Dwight Hammond and Steve Hammond, and Steve
19 Hammond is recognized only by Joe Glascock. Lance
20 Okeson can't say he saw both men. He knew Dwight, Lance
21 Okeson did. They see that plane go overhead and then it
22 heads back, circles -- you know, it goes back. So the
23 two men are out doing a black line until around 10:00,
24 10:30 at night. Meanwhile, we changed locations.
25 Remember I said there is four fires? And I told you

1 it'd take a while. This is fire number three.

2 Lance Okeson was asking for some help from
3 engines. He wanted some folks to come and try to help
4 him. And so there were some young firefighters on three
5 engines. And they were trying to get where Okeson was,
6 but they didn't do a very good job. It was late at
7 night. So as they were driving back by Moon Hill Road,
8 as they are going back up the road, one of the captains
9 was a young man named Hussey, he blows a tire at the
10 back end of a dual -- a second tire in the back. And
11 he's got to change it. So while he's changing it, the
12 other young man who's a guy named Dunten -- do we have
13 his photo? There it is. That's Mr. Dunten. And he
14 goes out here, drives out here, and he goes to the ridge
15 there, and he looks over the ridge to see what the fire
16 is doing.

17 Now, when he first goes out there, he sees it's
18 kind of skunking down and it's not timed. The RH's are
19 high. It's just kind of smoldering, it's doing nothing.
20 And he's not too concerned about it. Again, there was a
21 fire in the Krumbo area, so more than likely lightning
22 strikes started the fire, but it was doing nothing. So
23 he goes back and about an hour later, he comes back to
24 check on it again. Still can't move. And when he comes
25 back this time to the ridge, he notices something. He

1 notices that this fire is still skunking around here, as
2 the term is used. In other words, it's doing nothing
3 but smoldering, but there is three spot fires in a line
4 right below the ridge. And he's looking down at it.

5 And nowadays, we don't always take cameras but
6 we have cell phones and he takes a cell phone picture,
7 because he can't figure it out. He's been trained to
8 fire fight but the wind is going the wrong way. It's
9 not right. It bothers him.

10 Now, this butte's in the way here, so he can't
11 see beyond that butte. And you'll see photos. We have
12 a bunch of them. And he looks down, and it bothers him,
13 so he goes back to Mr. Hussey and he tells Mr. Hussey,
14 he'll testify to this, he says someone's lighting down
15 below us.

16 Mr. Hussey, next morning when Lance Okeson
17 comes, he gets more slash fuel for their backfire, is
18 told that someone is lighting them below them. He looks
19 at the photo on the cell phone. He goes to the ridge.
20 He's upset. Mr. Okeson then leaves and goes back to do
21 his work on Bridge Creek Road.

22 We're going to hold that up for just a second
23 because I have to jump ahead in my testimony. What
24 happens is after the fires were out, fire cause
25 investigator comes back out to the scene in September,

1 August or September time, that's September 3rd, I think.
2 Anyway, he comes back out here and he starts taking
3 these photographs and does his analysis and the only
4 place he can say there was an incendiary fire was right
5 here which says area of origin and J Bird, which is on
6 Hammond property. That's the only area.

7 He did not say there were three fires up here
8 that Mr. Dunten saw. And Mr. Dunten did not keep his
9 photograph on his cell phone so there's no photo for you
10 to look at. But he did do a diagram. And he will
11 testify and he is a witness.

12 So the expert says that's where the fire was
13 at. Now, we anticipate there might be a defense saying
14 that Mr. Hammond was up there and we'll talk to you
15 about that defense in a few moments after we talk about
16 Mr. Lance Okeson. What happens is this fire that
17 Mr. Dunten was talking about, he saw it, it was about 10
18 o'clock at night. And Mr. Glascock, when he was out
19 here at Lower Bridge Creek, that was in the morning.
20 Well, now we're talking about August 23rd, the morning
21 of August 23rd.

22 And up in the air is an air attack pilot named
23 Joe Bates. And he's been doing this for years and years
24 and years. He'll tell you all about that. And he's up
25 there and he's calling retardant drop, and he's looking

1 at this fire from yesterday. And he's looking at where
2 the fire line is at. You see it right along through
3 here (indicating). And he will testify that at about
4 10 o'clock in the morning that fire that he was in
5 charge of trying to drop retardant on, this is the line.
6 And as he's flying up this line, he looks off to the
7 east about two, three miles at a little bridge -- Big
8 Bridge Creek, creek area, he sees fire starts, two,
9 three miles away.

10 And he tells his pilot, you know, let's go over
11 there. We anticipate he'll testify that in all the
12 years and experience he's never seen that. That's the
13 first time.

14 So as he's heading over there, what we know is
15 Lance Okeson and Joe Glascock, they didn't get very far
16 with their black line. They got back down to a 2000 --
17 where there is a juniper cut. So from a 2005 fire to
18 where the juniper cut, they burned a black line. They
19 had a little bit of slop-over but they made sure that
20 was out. They made extra sure that was out because
21 they're asking for an engine to come help them. And the
22 engine was being driven by Chad Rott. And Lisa Megargee
23 was in it. That's Chad. And that's Lisa.

24 So they are coming down Bridge Creek Road. And
25 as they are coming down Bridge Creek Road, they are told

1 they're looking for slop-over, which means any fire that
2 was on the east side of the road not the west where the
3 black line is, and their job is to make sure it is out,
4 and it is, according to them.

5 And as they are going down the road, they are
6 also told there is a juniper across the road, a juniper
7 tree. Apparently the night before a juniper had fallen
8 down after the back burn, so it was across the road.
9 And they were going to cut that out so they'd have a
10 good -- you know, that road would be clear. It had been
11 freshly bladed. Be clear so they could go ahead and
12 have an escape route if they needed it.

13 So while Chad Rott and Lisa were there, Chad
14 parked his engine, he gets out, gets out his chainsaw.
15 And as he's doing that, we anticipate the testimony will
16 be, is that a blue pickup came up behind him. And he
17 look backed at it, and the driver of the blue pickup was
18 Steven Hammond. And he remembers Steven Hammond from
19 the year before. No doubt. And Steven Hammond gets out
20 of the pickup. And he had a passenger, an older man.
21 Chad didn't initially know who he was, will be the
22 testimony.

23 And Steven Hammond comes up and asks Chad how
24 long it's going to take? And Chad says as long as it
25 takes me to cut it up into the chainsaw. Steven Hammond

1 then goes back to his pickup. Doesn't offer to help.
2 That's okay. And goes ahead, backs his pickup about a
3 100 yards and then guns it, and goes up the side of the
4 hill there that's already been burned, back burned,
5 bouncing over rock and whatever. You'll see the photos.
6 And gets around them. And then takes off down the road.

7 Chad finishes cutting up the tree. And as he's
8 finishing cutting up the tree, Chad radios ahead to
9 Lance Okeson and says Steve Hammond is coming your way.
10 Then Chad and Lisa start driving down Bridge Creek Road.

11 As they start to drive down Bridge Creek Road,
12 they see fire. And they see it only on the east side of
13 the road. Only on the left. A short distance. And the
14 first fire is too big for them to put out. And it
15 doesn't make any sense. It was a black line.

16 And they keep driving. And as they're driving,
17 they only see more of these fires on the east side.
18 Chad gets a little panicky. He tells Lance, Lance
19 Okeson. Tells him, says come on down and put out the
20 test area. About the time these phone calls are going
21 on, the chronology will become important as the case
22 goes through it, Steve Hammond pulls up to Lance
23 Okeson's location and Joe Glascock, test fire, which is
24 the very bottom where the burn was in 2005, but he's by
25 himself. Dwight is not there. Not in the pickup.

1 Later, Chad Rott looks at some photos and picks
2 out the passenger to be Dwight Hammond. But when Steve
3 pulls up in his blue pickup, which has got these Les
4 Schwab TXR tires, they looked pretty new, Joe Glascock
5 notices that, he'll testify about that. What happens is
6 is Joe Glascock, we anticipate, does the Harney County
7 howdy-do, good morning, how you doing, Steve?

8 And the fire here is still two, three miles to
9 the west. But Lance Okeson doesn't do that. Lance
10 comes up, sticks his head in, and says, what are you
11 doing lighting underneath those guys last night -- below
12 my guys last night, referring to Krumbo.

13 Steve Hammond says, you know, I was just taking
14 care of my -- backfiring and taking my winter feed.
15 Lance gets angry, says don't you be doing that. You
16 give us a call. You gotta be telling us before you be
17 doing that. Steve Hammond says, well, maybe you guys
18 better clear out. And Lance Okeson says, not likely.
19 We're not going to. We got a job to do. Steve Hammond
20 says, I gotta go open some gates, and off he drives.

21 There was no mention, Lance Okeson will
22 testify, that Dwight Hammond was doing anything. There
23 was no mention even that Dwight Hammond was there.
24 There was no suggestion at that point that Steve Hammond
25 had someone else out there. But what happens is, is

1 Lance Okeson tells Joe, you know, go ahead and go back
2 up Bridge Creek and tell the fence contractors to
3 evacuate. Because all of a sudden there is fire on the
4 wrong side of the road. And Lance can't figure that
5 out. And he's an experienced firefighter. Where is
6 Lance?

7 So what he does is he gets on his ATV, his
8 four-wheeler, and he goes to a high spot on the road, we
9 anticipate the testimony will be. And when he gets to
10 the high spot on the road, he looks out in the distance,
11 and you can see for miles. Good vantage point. And
12 he's thinking he's seeing these fires all on the type --
13 it's to the right, it's two, three miles from the main
14 fire. And there is no lightning. Now, the winds are
15 coming up. They are going to be a bad wind about 1
16 o'clock, but this is still 10:00, 10:30 in the morning.
17 The winds are picking up.

18 And he's looking and he's looking and all of a
19 sudden he sees movement to his right. And then he sees
20 some puffy white smoke coming up. A recently set fire
21 is what he'll testify to based upon his experience. And
22 who does he see? Dwight Hammond walking away from a
23 recently set fire. He sees him.

24 And because, as I told you earlier, we
25 anticipate Lance Okeson will tell you, testify, that

1 he's a Burns boy, and he has seen Dwight Hammond, he
2 knew who Dwight Hammond was. He sees Dwight Hammond
3 walking away from that puffing Charlie Brown juniper
4 tree, it's on the grass going up, and it's starting to
5 burn black, he yelled out, Dwight, Dwight, stop. That's
6 going to be the testimony from Lance Okeson.

7 And at that point, Dwight Hammond is just going
8 across the road. And Dwight Hammond does not stop. He
9 goes across. He's heading toward the west, toward
10 Hammond property. Lance guns his four-wheeler, gets
11 down to the spot, gets off his ATV and begins to pursue.

12 And kind of a funny moment, he gets off his
13 ATV, takes about four steps after Dwight and he tumbles
14 because it's rocky territory, and he fouls up his ankle
15 a little bit. He gets up and he still goes after
16 Dwight. And we anticipate the testimony will be that he
17 catches up with Dwight somewhere right in this area
18 (indicating).

19 And when he catches up with him, he says,
20 Dwight, I know it's you, and that's when he stops behind
21 a juniper.

22 Now, at this point we anticipate the testimony
23 will be that Lance Okeson is trying to get a law
24 enforcement -- trying to get assistance, trying to go
25 ahead and get someone out there to help him. Because

1 he's a firefighter. He's not a cop. But he confronts
2 Dwight Hammond, and he says, you know, don't be doing
3 this, you are lighting us in. What about the kids?
4 Don't you care -- he just -- and you'll hear it, it
5 won't be from me, you'll hear it from Lance Okeson.

6 And when Dwight Hammond is talking to him, he's
7 got something in his hand, and he turns around, and he
8 does something like that, according to Lance Okeson's
9 testimony, and then all of a sudden Lance asks for Joe
10 Glascock. And Joe Glascock comes up. And Joe follows
11 this squelch. And comes to where Lance Okeson and
12 Dwight Hammond are looking at each other. And Joe goes
13 ahead and says how is it going, Dwight? And Dwight
14 says, not so good. That will be the testimony.

15 At that point Lance is trying to get a law
16 enforcement officer, but out in that country it's hard.
17 And the air attack pilot now is hearing it, and he's
18 trying to get a law enforcement officer. In fact, a guy
19 named George Orr is trying to get there.

20 As he's trying to get a law enforcement
21 officer, Lance Okeson will testify -- this part I'll
22 tell you -- will testify that as Lance is trying to get
23 the law enforcement officer, Dwight says, you don't need
24 to be doing that. You're going to get a lot of people
25 excited. Why don't you guys come on down to the ranch

1 tonight?

2 Okeson is having none of it. No. Okeson
3 doesn't know what to do with him. So he says to Mr.
4 Dwight Hammond, the defendant, I don't know what to do
5 with you. I guess I'm going to have to let you go. And
6 they leave and they walk back towards the ATV. And as
7 he walks back towards the ATV, something happens.

8 The area where they left Dwight Hammond there
9 is a fire and it starts to go up 10, 12 feet. And the
10 air attack pilot says there is a fire behind you and a
11 fire in front of you. And the air attack pilot,
12 Mr. Bates, will say, get out of there. You are
13 surrounded by fire.

14 Okeson, we anticipate the testimony will be,
15 gets a little hot headed, and takes basketball sized
16 boulders and he marks this area where there's a boot
17 print where he saw Mr. Dwight Hammond go across the
18 road. And when he gets that marked, he gets back on his
19 ATV, and he leaves where Joe Glascock goes the opposite
20 direction trying to find Mr. Dwight Hammond,
21 unsuccessfully.

22 Joe Glascock then comes back. They go back up
23 the road. You are going to hear a lot about how the
24 firefighting suppression stuff took place. But the
25 bottom line at that point is Lance Okeson gives his

1 report.

2 That should be probably the end of it except
3 the next -- the fire burns over, Sheriff Glerup shows up
4 and they do a helicopter back to the area where Lance
5 Okeson saw Mr. Hammond cross the road. And they take a
6 photograph of that boot print on the ground surrounded
7 by the basketball sized rocks, and they leave.

8 When they come back the next day, that
9 basketball rocks had been kind of moved to the side and
10 there was no boot print left. It's been brushed away.
11 And there is tire marks on the ground. And they look
12 like TRX tire marks. And you'll see the photographs.

13 And later we go ahead and take photographs of
14 the blue pickup that smells like smoke. And we also do
15 a search warrant for the ranch, but we don't find any
16 boots that smell like smoke. No boots at all that smell
17 like smoke, according to Sheriff Glerup.

18 So the next day, Joe Glascock who's been
19 calling Steven Hammond asking about his dad, calls Steve
20 Hammond in the morning saying how's Dwight? What's
21 going on? After all, Joe Glascock is the range con.
22 Steven Hammond answers him. Why don't you come -- you
23 know, I'll bring you some cookies and waters or words to
24 that effect. Joe says no. So let's meet at the
25 Frenchglen Hotel.

1 So they go down and meet at the Frenchglen
2 Hotel, but there is also the sheriff and the LEO, law
3 enforcement officer for the BLM, were out at Frenchglen
4 also. As they get down to the Frenchglen Hotel, Joe
5 goes inside and talks to Steve Hammond. I'm not going
6 to go through the whole conversation because I've
7 already talked about 45 minutes, almost 50. But we
8 anticipate the words that Mr. Joe Glascock will testify
9 to was that Steve Hammond told him this could get ugly
10 and this could be a sticky situation. You know,
11 management cycles through here all the time. And I know
12 you want to be part of this community. If you want to
13 stay here, you'll make this go away. If I go down, I'm
14 taking you with me. You lighted those fires, not me.

15 Mr. Glascock reports that. And then what
16 happens after that is that we bring in a bunch of fire
17 cause investigators, and they look at their ignitions,
18 and you're going to hear all about how they go out there
19 and find where these fires are. It's like Gary White,
20 Carrie Bilbao, and John Bird. There is actually more,
21 but we're only going to be calling three. We could call
22 more. And they're going to talk about how these were
23 incendiary set and how they stand in ground coordinates.

24 And there were trail fires, they call some of
25 them -- Lance Okeson did a little follow the path of

1 some boot prints, you know, and that's really what they
2 are going to be talking about. But we'll have those
3 experts talking about the loss damages in this case.
4 And that will be the experts.

5 But something else happens. Something else
6 happens. While we're investigating this 2006 fire after
7 Lance Okeson gave his statement, Mr. Shrader decides to
8 go talk to somebody up in Richland, Washington. And we
9 anticipate the testimony will be is that Mr. Shrader
10 went up to Richland, Washington, to talk to a person
11 named Dusty Hammond, the grandson of Dwight, the nephew
12 of Steven. 13-year-old boy back in 2001. Remember
13 Mr. Choate? The case that went nowhere?

14 Dusty was living on the ranch. His parents
15 were going through a divorce. He had a sister named
16 Jacquie. Jacquie Hammond McDonald is her name. Jacquie
17 went back with her mom. Dusty stayed out there. When
18 he was 13 years old, about September 30th, he was going
19 to go hunting that morning with his grandfather and his
20 dad, Rusty Hammond, also with his cousin, Jacon Taylor,
21 not a close cousin but apparently the relative of Steve
22 Hammond's wife.

23 So Dusty got up that morning. And he will
24 testify that he heard his grandfather and his uncle
25 talking about how when there's hunters on the mountain,

1 we light up the mountain, we burn it.

2 They don't like hunters on the mountain. Dusty
3 will testify to that. Dusty that particular morning
4 that his grandfather got up in his Super Cub and flew
5 over the area and came back and reported to the people
6 at the breakfast table, pretty much to the effect that
7 there is hunters on the mountain, but there is also a
8 group of deer near the waterhole. So they all after
9 breakfast went ahead and they got into various vehicles,
10 including Susan Hammond driving a Lincoln, and they
11 drove down to the Hammond cabin on the property on the
12 Steens Loop Mountain Road.

13 And once there, and Dusty had been there
14 before, once there, they got their guns, got into
15 grandpa's pickup, Mr. Dwight Hammond's pickup, and went
16 down and went to a place called the Old Gravel Pit or
17 near it. And once they got there, they got out. And he
18 will testify that his uncle Steven was wearing a white
19 straw cowboy, and that his father was wearing kind of a
20 baseball golf hat. And that he was wearing kind of like
21 an Elmer Fudd hat with the ear things. And he couldn't
22 remember what Jacon was wearing. But they went ahead
23 and they started hunting four abreast going up Mudd
24 Creek, excuse me, Fence Creek toward Big Fir, and they
25 walked across this land.

1 Jacon's stomach was pretty upset that morning.
2 And they were making a joke about him. But they finally
3 got to where they were supposed to meet up with Dwight
4 Hammond at Rock Jack Gate. Well, when they got there,
5 his grandfather was not there. And Dusty Hammond,
6 13-year-old boy, was real thirsty. He needed some
7 bottled water. He said that kind of bothered him, but
8 his grandfather wasn't there, so they kept hunting four
9 abreast along the fence line here. Jacon to his left.
10 He was the next person. The dad, Rusty or Russell, was
11 ahead and Steven was in the lead.

12 And that when they went over a ridge, Steven
13 was the first over the ridge and he heard shots. Then
14 Russell, his father, went over the ridge. And Dusty
15 thinks he heard more shots, not sure. He gets over the
16 ridge, he's looking through his scope and he doesn't see
17 anything. And then he remembers all four of them were
18 over on top of the ridge.

19 He was told by his father you should have been
20 shooting but you weren't. And the father, Rusty, then
21 goes and joins up with Steve. And after a while,
22 Russell Hammond comes back. And the two of them then
23 walk along the fence line across public land to a place
24 called Rock Crib. It's not really a place. Rock Crib
25 is nothing more than a bunch of rocks put together where

1 fences come into it.

2 But then along the tributary of Mud Creek, and
3 that's where he's at, and that's where he stands with
4 his father until his uncle arrives, Dwight Hammond pulls
5 up in a pickup, and Dusty goes to the pickup because
6 he's thirsty. And he gets his bottle of water. And his
7 father calls him over to where Steven and Dwight are
8 standing. And Dwight starts handing out boxes of
9 matches, matches, strike anywhere matches. And gives
10 Dusty, this 13-year-old boy, matches and he says we're
11 going to light up the whole country.

12 And he's told then to go ahead and walk along
13 the fence line, the BLM property here, right along the
14 fence line, in the Mudd Creek area and to drop the
15 matches. And he does that. Not very good at it. Not
16 many fires start. But he looks back at his father,
17 Russell, who's doing a pretty good job lighting
18 cheatgrass. And after a while, they get a good fire
19 going, he loses sight of his father. And all of a
20 sudden, the fire is all around him because it's coming
21 from this direction, too, from this -- coming from the
22 west towards him in the east. So he kind of wanders
23 down to Mud Creek a little ways. And he tries to get on
24 a piece of rock and the fire burns by him.

25 And then he makes a turn and he starts

1 following the fence line of an old cattle trail back to
2 where they are supposed to meet up, because his uncle
3 told him go in that direction until you get to the
4 cattle guard.

5 Well, Dusty was the last one there. And it
6 took him about an hour to get there. And as he's
7 walking up Steens Mountain Loop Road, up comes his
8 grandfather in the pickup, picks him up, they go back to
9 the Hammond cabin. And he and the rest of the people,
10 except for Steven Hammond, leave. And they go back to
11 the ranch where he has himself his lunch. He remembers
12 that, 13-year-old boy he remembers his lunch. It was
13 lunchtime when they got back to the ranch.

14 What time -- about the same time the Nelsons
15 got back to their ridge. The fire has been burning. At
16 12 noon, Steve Hammond calls the BIC, Burns Interagency
17 Communications Center, and he asks if it's okay -- is
18 there a reason why a person can't be doing a controlled
19 burn? And the little gal there, summer help, she
20 says -- her name is Tammi Renfro. We anticipate her
21 testimony will be that, no, in fact, we've got a
22 controlled burn going on at V Lake now and they kind of
23 laughed about it. So he makes the call about a
24 controlled burn two hours after the fire has been
25 burning on his property and going onto BLM property.

1 Same fire Gordon Choate said that caused him and his
2 crew to leave. Dusty will be the witness.

3 Now, I've been talking longer than I told the
4 court I would. But what our case boils down to, there's
5 going to be a lot of expert testimony, and we anticipate
6 the defense is going to put on experts that will say
7 they were moving cattle, that they were just justified
8 in doing this, and that's all good, and that's their
9 job. Just as I'm trying to do mine. But this case for
10 the government after you are here for a week or two or
11 however long it takes, will you go through them, please,
12 what it really boils down to, whether you are convinced
13 beyond a reasonable doubt by the testimony of Gordon
14 Choate, excuse me, the witnesses, Mr. Choate, please.

15 Now, Mr. Choate; and Dusty and Dusty Hammond;
16 testimony of Joe Glascock; Mr. Dunten, the young man on
17 the ridge; Mr. Chad Rott, the young man driving the
18 engine; Lisa Megargee, she doesn't have a lot to offer
19 but she's going to testify; and Lance Okeson. The one
20 person you don't see is Dusty Hammond. He should
21 testify today or tomorrow, probably tomorrow given the
22 time.

23 We anticipate that this case when we're done --
24 you cut it down and you go through the shank, the
25 muscle, and you get to the bone, what you're going to

1 find and what this case is about, you will weigh those
2 four witnesses, people who saw what they saw, heard what
3 they heard, and testify in front of you folks here
4 today.

5 I've taken a long time. I thank you for your
6 patience. I know it's a complicated case.

7 THE COURT: Thank you. We'll take a ten-minute
8 break.

9 (Recess: 1:46 p.m.)

10 (Further proceedings were had by Reporter
11 Amanda LeGore, and are bound under separate cover.)
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1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter
3 for the State of Oregon, do hereby certify that I was
4 present at and reported in machine shorthand the oral
5 proceedings had in the above-entitled matter. I hereby
6 certify that the foregoing is a true and correct
7 transcript, to the best of my skill and ability, dated
8 this 12th day of June, 2012.

9
10
11 /s/ Deborah Wilhelm

12 -----
13 Deborah Wilhelm, RPR
14 Certified Shorthand Reporter
15 Certificate No. 00-0363
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